

EMPLOYMENT

Generally, employment occurs when an employer engages the services of an employee for pay. An “employer” can be any employing unit such as a sole proprietor, joint venture, partnership, limited liability company, or corporation. An “employer” can also include associations, trusts, charitable foundations, nonprofit organizations, public entities, and other organizations. An individual is determined to be an “employee” under common law rules or by application of specific statutes.

Who Is an Employer?

Generally, a business becomes an employer when the total wages paid to one or more employees are in excess of \$100 in a calendar quarter. Wages consist of remuneration for services performed, including cash payments, commissions, bonuses, and the reasonable cash value of nonmonetary payments for services.

Once a business becomes an employer, it must complete a registration form, DE 1, and submit this form within 15 days to the Employment Development Department (EDD). Employers are responsible for reporting wages paid to their employees and paying unemployment insurance (UI) contributions and employment training tax (ETT) on those wages, as well as withholding and remitting state disability insurance (SDI) contributions and personal income tax (PIT) due on wages paid to workers.

Who Is an Employee?

An “employee” includes any of the following:

- Any officer of a corporation.
- Any worker who is an employee under the usual common law rules.
- Any worker whose services are specifically covered by law.

An employee may perform services on a less than full-time or permanent basis. The law does not exclude services from employment that are commonly referred to as day laborers, part-time help, casual labor, temporary help, probationary, or outside labor.

Who Is a Common Law Employee?

A common law employee is an individual who is hired by an employer to perform services and the employer has the right to exercise control over the manner and means by which the individual performs his or her services. The right of control, whether or not exercised, is the most important factor in determining the relationship. The right

to discharge a worker at will and without cause is strong evidence of the right of direction and control. Other factors to be taken into consideration are:

1. Whether or not the one performing the services is engaged in a separately established occupation or business.
2. The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of a principal without supervision.
3. The skill required in performing the services and accomplishing the desired result.
4. Whether the principal or the person providing the services supplies the instrumentalities, tools, and the place of work for the person doing the work.
5. The length of time for which the services are performed to determine whether the performance is an isolated event or continuous in nature.
6. The method of payment, whether by the time, a piece rate, or by the job.
7. Whether or not the work is part of the regular business of the principal, or whether the work is not within the regular business of the principal.
8. Whether or not the parties believe they are creating the relationship of employer and employee.
9. The extent of actual control exercised by the principal over the manner and means of performing the services.
10. Whether the principal is or is not engaged in a business enterprise or whether the services being performed are for the benefit or convenience of the principal as an individual.
11. Whether the worker can make business decisions that would enable him or her to earn a profit or incur a financial loss. Investment of the worker's time is not sufficient to show a risk of loss.

The right to control the means by which the work is accomplished is clearly the most significant test of the employment relationship and the other matters enumerated constitute secondary elements. In considering the factors, a determination of whether an individual is an employee will depend upon a grouping of factors that are significant in relationship to the service being performed rather than a single controlling factor.

Who Is an Employee by Specific Statute of Law?

A worker not considered to be a common law employee may be a statutory employee by law for purposes of UI, SDI, and ETT under circumstances which include, but are not limited to, the following:

- An agent driver or commission driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services for his or her principal. The contract of service contemplates that substantially all services are to be performed personally by the worker. The worker does not have a substantial investment in facilities used in performing the services, and the services are not in the nature of a single transaction.
- A home worker performing services according to the specifications furnished by the person for whom the services are performed on materials or goods furnished by such person which are required to be returned to such person or a person designated by him or her. The contract of service contemplates that all services are to be performed personally by the homemaker. The worker does not have a substantial investment in the facilities used in performing the services, and the services are not in the nature of a single transaction.
- As a traveling or city salesperson, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his or her principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations. The contract of service contemplates that substantially all services are to be performed personally by the worker. The traveling or city salesperson does not have a substantial investment in facilities used in performing the services, other than in facilities for transportation, and the work is not in the nature of a single transaction.
- A writer is performing services in employment when a person contracts for the creation of a specially ordered or commissioned work of authorship. The parties expressly agree in writing that the work shall be considered a work made for hire, and the ordering or commissioning party obtains ownership of all of the rights comprised in the copyright in the work.
- Construction workers performing services for which a contractor's license is required are employees of a person who is required to have a license, unless the workers are in fact licensed. In other words, a

contractor who hires unlicensed subcontractors or construction workers is the employer of those workers or subcontractors (see Information Sheet: Construction Industry, DE 231G).

Who Is Not an Employee?

Independent contractors are not employees. They are engaged in separately established bona fide businesses. A bona fide business is subject to profit or loss. They are usually contracted to perform specific tasks, and they have the right to control the way the work is to be accomplished. They have a substantial investment in the business and perform services for more than one business. Generally speaking, they are anyone who is not an employee under the common law rules unless they are statutory employees.

Are There Services of Employees That Are Not Covered?

Services of certain employees are specifically excluded by law and their wages are not subject to UI, SDI and ETT. Examples of such services include, but are not limited to, the following:

- Family members, but restricted to:
 - 1) A child under 18 years of age in the employ of his or her biological or adoptive parent or parents;
 - 2) An adult in the employ of his or her biological or adopted child or children; or
 - 3) An individual in the employ of his or her spouse.
- This exclusion can apply only to sole proprietorships and partnerships where the worker has one of the above referenced relationships with all partners. The wages paid to such workers are subject to PIT withholding.
- Students under the age of 22 enrolled full-time in an academic institution and performing services for credit under a work experience program. Wages paid to such workers are subject to PIT withholding.
- Direct salespersons (see Information Sheet: Salespersons, DE 231N).

Additional Information

For additional information regarding employment, contact the nearest Employment Tax Office (listed in the *California Employer's Guide, DE 44*, and on our Internet site at www.edd.ca.gov/taxloc.htm) or call us toll-free at 1-888-745-3886.

Speech and hearing impaired customers can contact us at 1-800-547-9565.

Equal Opportunity Employer/Program. Auxiliary services and assistance available to persons with disabilities.